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PROPER NAMES

By Frederick Dwight.

A few months ago the Court of Appeals of New York handed down a decision which attracted some attention at the time, not so much because of the conclusions reached, as for the historical review in it of a well settled though, perhaps—to the layman—unfamiliar doctrine of law.

The facts of the case are not material to this paper and may be omitted. The point discussed was whether a man who, without any formalities whatever, had adopted an entirely new name for himself and had been known and called by the artificial designation for many years, was justified in declaring that to be his true name.

The court, after outlining the origin and history of proper names, held that the man in question was entirely within his rights. Moreover, it was decided that a New York statute which provides certain simple machinery by which one may apply through the courts to change his name is not a limitation upon the common law right, but a supplement to it. In other words, the statutory proceeding simply fixes a date upon which the transfer goes into effect, whereas by the informal method a person would have to "grow into" the new designation, as it were.

One hesitates to suggest new fields for legislation as, in economic terms, we are suffering from an overproduction of statutes and the desire of the judicious is to see a stoppage of the presses rather than an increased activity. Nevertheless, it may be said colloquially that, so far as subjects are concerned, the body of statutory law resembles a boarding house mattress, with lumps in one place, depressions in another. And while one admirable object of reform is to plane away the hillocks of excessive regulation, it is not improper to direct attention to holes that might be filled.

There is not the slightest doubt that the decision of the New York court was correct upon the law as it stands to-day. By the common law of England a man was entitled to adopt a new name for himself as one changes a coat. "A man," says one authority, "may lawfully change his name, or by general use or habit acquire another name than that originally borne by him, and

this without the intervention of either the sovereign, the Courts or Parliament." [1] Moreover, the privilege included not only the divesting himself of his former cognomen, but the selection of any other, even though the new was already borne by some one else. "At common law," observed the court in an English case, "there is no property right in any person to the use of a particular name as a surname, to the extent of enabling him to prevent the assumption of the same name by another person." [2]

This *laissez faire* attitude in Great Britain is explained historically by the fact that only within the last few centuries have proper names acquired any hereditary character among the "common people." The New York court, in the case already referred to, cited from Camden's Remains an instance of a family in which a father and eight sons all had different surnames. And to this day there are said to exist in remote districts people with only one name and that not a family name.

Such a condition of affairs is entirely comprehensible when it exists among a people, simple, rude, and illiterate, living, dying and having all of their interests limited to the narrow communities in which they dwell. Names for them would serve merely as ready means of identification, like trade-marks to-day on goods. Indeed, the inhabitants of remote and primitive districts in this country, such as are found in the northern Maine woods, sometimes know one another as "John," or "Bill," only and do not know the family names belonging to them.

Then this informality would be rendered still more innocuous in Great Britain by two other considerations that are fairly obvious. In the first place individuals raised to the peerage and given the choice of names have always had an inducement to select a designation not borne by others. It is a badge of distinction and a clashing avoided through this reason alone. Secondly, so far as the lower classes are concerned, in such an extremely homogeneous land where, out of 37,000,000 inhabitants, only about 300,000 are foreigners, practically the sole undesirable result of such changes is a confusion of individual and not race identity. If a man whose father was named Smith prefers to be known as Brown, there is perhaps no particular reason why he should not gratify his taste, however much he may thus complicate genealogical records.

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[1] Am. and Eng. Encyc. Law (2nd ed.), vol. 21, p. 311.

[2] *Du Boulay v. Du Boulay*, L. R., 2 P. C., 430.

In short, such importance as proper names have, accrues only as civilization becomes complex, with a greatly increased mingling of people, the multiplication of written records, and the growing necessity for preserving identities.

Now, it is a familiar fact that the common law of England was transferred bodily to this country and its doctrines obtain wherever they have not been abrogated by statute. But the most casual reflection will suggest the presence of considerations, as far as names are concerned, differing from any that existed in the older country. This is not a homogeneous nation, but a vast congeries of diverse races, drawn from every quarter of the earth, nearly one-half being foreign born or of foreign parentage. One of the consequences is that referred to in the preceding paragraph, namely, the increased significance of proper names. With the advancing complexity of society and means of transportation, communities have become more fluid. Men no longer live and die where they were born, but move here, there and everywhere as opportunities for improving their condition appear. But also we are brought more and more closely into contact with those by whom we are surrounded and when, as new arrivals, it is more difficult to learn who and what they are, any items of information that may be gleaned are of value.

Now, under such circumstances, the name is one of the first and most obvious things that occur. And hence, as was said, they have come, unconsciously perhaps, to have increasing importance in our sight. A very familiar illustration of one aspect of this fact is found in the way we associate names with racial skill and capacity to an extent probably known nowhere else in the world. English names are at a premium for tailors and bootmakers, French for milliners, Spanish for cigarmakers, and Oriental for carpets and rugs. While socially the names peculiar to the stocks, Anglo-Saxon, Dutch and Huguenot, that founded the nation and still predominate command a prestige that is undeniable. Moreover, this advantage inheres not so much in any one name as in the sound. It is the suggestion of race affiliation that counts, not the belonging to one particular branch of family.

Such being the case, it is interesting to note the lines along which the unrestricted right has been utilized in the United States. Although the statement of the common law rule was that anyone had the privilege of assuming a name for himself, in practice the new designation was at one time frequently assigned to him by his neighbors, expressive of some peculiarity either physical, as

Long, Short, or Strong, or mental, as Bright, Wiley, and Gay. Very often it referred to the occupation of the man, as Butler, Carpenter, or Smith. These are merely samples of a multitude of considerations that governed the matter.

Among us, however, this custom is absolutely non-existent and with the exception of sporadic instances of change in order to acquire an inheritance or for some similar reason, as Edmund Fiske Green became John Fiske, the historian, the right seems to be invoked chiefly by aliens to blot out the evidence of race origin which their former designations supplied.

There is no available method of determining to what extent the informal common law method of transformation has been applied because such changes would not be matters of public record. But when foreigners have chosen to avail themselves of the statutory procedure the information is preserved. And an inspection of any volume of the Session Laws of New York State alone reveals the fact that a widespread racial metamorphosis in this respect is under way.

As illustrations, a few picked at random from one or two volumes may be given, although they might be multiplied a thousand fold. Kuschewsky has become Kaye; Jacobowitz, Palmer; Poznanski, Postley; Staroselsky, Starr; Marschawsky, Ward; Schlimowitz, Wilson; Kaminowsky, Bennett; Botkowsky, Butler; Dabrocryriskie, Davis; Campodonica, Martin; Novinsky, Nevins; Smusovitz, Phillips; Sausersig, Seymour; and Cidkowski, Sydney. While some names, such as Morris, Harris, and the sturdy Gordon, have been appropriated so widely by aliens that their original savor has well-nigh disappeared.

Renan has a caustic comment on the old Christian legend of the Saint who, when threatened by a lion, resorted to prayer, whereupon a sheep kindly appeared and was devoured, while the holy man made his escape. Where, asked Renan, was the justice to the sheep? And so, while sympathizing with those whose birth names are harsh or even grotesque, we might ask whether it is just to the bearers of honored cognomens to permit such easy misappropriations to continue indefinitely. The motive must be frequently that alluded to above, namely, the desire to obtain an added prestige by assuming a designation that is not only euphonious, but is already associated in the public mind with honorable living and high endeavor. Moreover, one may doubt the wisdom, as a practical matter, of permitting a destruction of the evidences of race origin. As data for the study of criminology are collected

with greater and greater care, it becomes increasingly important that such lines of research should be kept open and not obliterated.

At least it seems only proper that aliens desiring to discard their inheritance of consonants should be limited as far as possible to names coined by themselves or the State for the purpose and not be permitted to seize upon those that suit them rather less than would Highland kilts a gang of Italian navvies.

There is nothing new or radical in this because the lack of regulation disappears as soon as we leave the domain of "proper names"—as we employ that term. The Post Office Department will not permit a new town to adopt a name already used by another, and the writer was told recently of one village which wanted a post office and tried thirty-seven names before one was found acceptable to the authorities. Corporations are absolutely prohibited from taking names already pre-empted. Indeed, in mercantile affairs, where financial considerations prevail, the confusion and unfair advantage that such looseness would produce were recognized long ago and proper restrictions imposed. As far back as 1833 an act was passed by the Legislature of the State of New York, preventing a man from doing business under any other than his real name, nor may one adopt a trade name for himself or his goods which is liable to be confused with that of someone else who has long used it and to whom it is a valuable asset.

It is true, of course, that these provisions have been established for purely "practical" reasons, while their extension would have to be based largely upon sentimental grounds. Yet there is much in the consideration that a "good name" inherited, is an ideal to live up to—at a time especially when all worthy ideals should be encouraged—while if adopted merely it is apt to be rated only according to its social or commercial value.

Then, too, sentiment and the practical have many points of contact. Public parks, broad streets, buildings restricted in height, may have been advocated once solely on aesthetic grounds. But to-day we realize their vital bearing upon public health and morals. and proper names may contain more than we think. "To review the sources of a people's nomenclature," observed Mr. Bardsley, in his book on *English Surnames,* "is to review the people's history. When we remember that there is nothing without a name, and that every name that is named, whether it be of a man, or man's work, or man's heritage of earth, came not by chance, or accident, so-called, but was given out of some nation's spoken

language to denote some characteristic that language possessed, we can readily imagine how important is the drift of each—what a record must each contain."

The suggested limitation then is twofold: First—That a man be prohibited from divesting himself of his baptismal name without making the matter one of public record. Secondly—That he be not allowed to assume a name already borne by others, but be compelled to coin one, by translation, as the German Schönberg —was changed to the French Belmont, or by an arbitrary assemblage of letters as cable code names are devised. Possibly it would be practicable for the State to establish a table of artificial names, any one of which might be selected by an aspirant for euphony.

At least this may be said. Many prophets declare that the races which founded and developed this country are hurrying to extinction. If it be so, they may, without undue selfishness, ask the privilege of carrying to oblivion the peculiar heritage of names, as their predecessors, the Indian braves, were buried with the adornments they possessed in life.

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